IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

S.T.Rev.No.378 of 2004

AGAINST THE ORDER DATED 30/12/2000 IN T.A.NO.580 OF 2000 OF THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-I, PALAKKAD.

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REVISION PETITIONER/RESPONDENT/REVENUE:-

STATE OF KERALA,
RERESENTED BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

RESPONDENT: APPELLANT/ASSESSEE:-

M/S. M.K.R. ENTERPRISES,
A.V.S.ROAD,
KOTTAKKAL P.O.,
MALAPPURAM.

BY ADV. SRI.K.SRIKUMAR
SRI.C.N.SREEKUMAR
SRI.K.MANOJCHANDRAN
SRI.P.R.AJITHKUMAR

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.DATTU, C.J. & K.M.JOSEPH, J.

S.T.Rev.No.378 of 2004

Dated, this the 24th day of October, 2007

ORDER

H.L.Dattu, C.J.

Revenue is before us in this revision petition filed under Section 41 of the Kerala General Sales Tax Act, 1963 ('the Act' for short), inter alia, questioning the correctness or otherwise of the orders passed by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench-I, Palakkad in T.A.No.580 of 2000 dated 30th December, 2000.

(2) The Revenue has framed the following questions of law for our consideration and decision. They are as under:

> "1) Whether on the facts and in the circumstances of the case is the tribunal justified in allowing the contention of the assessee that there was no purchase suppression.
>
> 2) Whether on the facts and in the circumstances of the case has not the Tribunal taken notice that the book of accounts of the dealer, were subjected to minute audit by the Chartered Accountant as provided under Section 27A of the K.G.S.T.Act 1963 and certificate to that effect in Form 50A obtained from the Chartered Accountant and Declaration in Form 50B duly signed by the Respondent/Assessee were filed and thus any sort of manipulation insertion or alteration in the entries made in the book of accounts or allied statement would have been noticed at the time of Audit and there was no possibility or probability for any such alteration or correction.
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> 3) Whether on the facts and in the circumstances of the case has not the Tribunal failed to appreciate the fact that the certificate obtained from the Kerala State Beverages Corporation does not mean or state that there was no other purchase of Indian Made Foreign Liquor other than those made from Kerala State Beverages Corporation."

(3) The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act. The assessee is doing business in liquor. For the assessment year 1993-94 the assessee had

filed its annual return and in that had conceded the total turnover and taxable turnover. Along with the return so filed, the assessee had also enclosed the statement of accounts prepared by the Manager/Accountant of the assessee firm.

(4) The assessing authority without rejecting the books of accounts produced by the petitioner at the time of quantification of the tax liability, and merely relying upon the statement of accounts furnished by the Accountant of the firm has proceeded to quantify the tax liability by making certain additions in the taxable turnover declared by the dealer.

(5) Making that as a grievance, the assessee had carried the matter before the first appellate authority. The first appellate authority has confirmed the findings and conclusions reached by the assessing authority.

(6) Aggrieved by the said order, the assessee had preferred a second appeal before the Sales Tax Appellate Tribunal in T.A.No.580 of 2000. The Tribunal by its order dated 30.12.2000 has allowed the assessee's appeal and has deleted the additions made by the assessing authority. That is how the Revenue is before us in this revision petition.

(7) This Court in exercise of its powers under Section 41 of the Act can entertain a revision petition, if for any reason the Tribunal has erroneously decided a question of law or failed to decide a question of law that was raised in the memorandum of appeal.

(8) In the instant case, the assessing authority has passed the best judgment assessment after rejecting the return filed by the assessee for the assessment year 1993-94. The basis for rejecting the return filed by the assessee is the statement of accounts furnished by the assessee along with its return. The assessing authority nowhere in the order of assessment has

stated that the purchases and the sales effected by the dealer are not truly reflected in the books of accounts. That only means that the assessing authority has not rejected the books of accounts maintained by the dealer in the regular course of business.

(9) Merely relying upon the statement of accounts furnished by the Accountant of the assessee firm, the assessing authority has proceeded to pass the best judgment assessment. Even before the assessing authority, the assessee's main contention was that the Accountant while furnishing the statement of accounts along with the return filed has made a clerical mistake. According to the assessee it was a deliberate mistake made by the Accountant in order to put the assessee into problems at the time of completion of the assessment proceedings. This issue was canvassed even before the first appellate authority, but the first appellate authority has ignored the same and has proceeded to confirm the order of assessment.

(10) The Tribunal which is also a fact finding authority, after taking into consideration the plea of the assessee and also going through the books of accounts maintained by the dealer during the course of business, has come to the conclusion that since the purchases and sales effected by the dealer are truly reflected in the books of accounts, there was no reason for the assessing authority to rely merely on the statement of accounts furnished by the Accountant. Accordingly, the Tribunal has come to the conclusion that both the assessing authority as well as the first appellate authority have committed an error on facts.

(11) The Revenue in this revision petition would contend that the Tribunal is not justified in setting aside the orders passed by the assessing authority as well as by the first appellate authority. In our opinion, this

contention of the learned Government Pleader cannot be accepted by us. As we have already stated, the assessee has effected purchases from the Kerala State Beverages Corporation and the same is reflected in the books of accounts maintained by the assessee. The sales are also again reflected in the books of accounts. But the Accountant, for the reasons best known to him, had inflated the figures other than what was in the books of accounts. Keeping this aspect of the matter in view, the Tribunal after going through the books of accounts, has come to the conclusion that there was no basis for the assessing authority to take into consideration only the statement of accounts furnished by the Accountant rather than the books of accounts maintained in the regular course of business. This conclusion reached by the Tribunal, in our opinion, cannot be said to be improper or illegal or arbitrary. In that view of the matter the revision petition requires to be rejected and the order passed by the Tribunal requires to be confirmed. Accordingly the following:

Order

i) Revision petition is rejected.

ii) The questions of law framed by the Revenue are answered against the Revenue and in favour of the assessee.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

vns/DK.